

## **REMARKS**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

New claim 42 has been added.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-43 are now pending in this application. Claims 1-20, 35, and 38 have been withdrawn from consideration.

### **Information Disclosure Statement**

Applicant acknowledges receipt of a signed copy of the PTO/SB/08 form submitted on February 12, 2009. However, no indication was provided that the references in the PTO/SB/08 form were considered. Applicant respectfully requests that the Office provide a signed and initialed copy of this PTO/SB/08 form with the next Office correspondence.

### **Rejection under 35 U.S.C. § 102**

Claims 21-34, 36, 37, and 39-41 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Published Application No. 2003/0220697 to Justin *et al.* (hereafter "Justin"). This rejection is respectfully traversed.

### **Independent Claim 21**

Independent claim 21, as amended, recites a femoral component for a total knee joint replacement comprising, among other things, a plurality of segments, each of said segments having at least one assembly surface adapted to be joined to an assembly surface of an adjacent one of said segments, wherein at least two adjacent segments each comprise a bearing surface on an anterior portion of said component, said adjacent segments being

positioned to form a generally continuous bearing surface on an anterior portion of said component, wherein edges of mutually contacting assembly surfaces on portions of the assembly surfaces closest to the generally continuous bearing surface are recessed below said generally continuous bearing surface on an anterior portion of said component, wherein each of said plurality of segments is configured to be separately inserted through an incision in a person and assembled to another of the plurality of segments after insertion through the incision. Claims 22, 28-34, 36, 37, and 39-41 depend from claim 21.

The Office asserts on page 3 of the Office Action that Justin discloses a femoral component for a total knee joint replacement comprising a plurality of segments and that “[t]he edges [of Justin] necessarily are recessed below the continuous bearing surface, and it is because of this that the edges exist in the first place. These edges can be characterized as being a beveled corner vis-à-vis the continuous surface.”

Applicant respectfully disagrees. Justin does not disclose or suggest a femoral component for a total knee joint replacement having edges of assembly surfaces that are recessed below a generally continuous bearing surface, as recited in claim 21. The Office appears to argue that simply because a first surface extends below a second surface, an edge of the first surface must be recessed below the second surface. However, one of ordinary skill in the art would understand that this is not true when the first and second surfaces meet at a right angle to form an edge, as appears to be the case in the Justin device. To the extent the Office is asserting that Justin teaches a beveled edge, Applicant finds no indication in Justin that the pertinent edge is beveled.

Moreover, Justin does not disclose or suggest a femoral component for a total knee joint replacement “wherein edges of said mutually contacting assembly surfaces on portions of the assembly surfaces closest to the generally continuous bearing surface are recessed below said generally continuous bearing surface on an anterior portion of said component” (emphasis added), as recited in claim 21. For example, in the device of Figure 12, Justin does not disclose or suggest that edges of surfaces 166, 168 on portions of the surfaces 166, 168 closest to surfaces 165, 164 are recessed below any bearing surface that might be formed by surfaces 165, 164.

For at least the reasons discussed above, Justin does not anticipate claims 21, 22, 28-34, 36, 37, and 39-41 because Justin does not disclose or suggest all of the features of claim 21. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 39 and 41

Claims 39 and 41 depend from claim 21 and are allowable over the prior art for at least the reasons discussed above.

Claim 39 further recites “wherein the assembly surfaces of the segments are positioned to minimize contact with one of an overlying patella and an overlying patellar component.” Justin does not disclose or suggest that any assembly surfaces of the device of Justin are positioned to minimize contact with one of an overlying patella and an overlying patellar component, as recited in claim 39.

Claim 41 further recites “including two condylar portions with a groove between the condylar portions, wherein the assembly surfaces are positioned in the groove.” Justin does not disclose or suggest that the device of Justin includes two condylar portions with a groove between the condylar portions, with assembly surfaces positioned in the groove, as recited in claim 41.

Independent Claim 23

Independent claim 23 recites a method of implanting a femoral component for a total knee joint replacement on a distal end of a femur comprising the steps of: providing a plurality of segments, each of said segments having a femoral fixation surface adapted to be positioned on a distal end of a femur and at least one assembly surface adapted to be joined to an assembly surface of an adjacent one of said segments, and selecting segment sizes configured to position the assembly surfaces of the segments at a desired location when implanted on a distal end of a femur. Claims 24-27 depend from claim 23.

The Office asserts on page 3 of the Office Action that Figures 9, 12, 16a and paragraph 0076 of Justin disclose “selecting segment sizes configured to position the

assembly surfaces of the segments at a desired location when implanted on a distal end of a femur,” as recited in claim 23.

However, the cited figures and paragraph do not in any way teach or suggest selecting segment sizes for the reason of positioning the assembly surfaces of the segments at a desired location when implanted, as recited in claim 23. Justin is silent in regard to these features. Instead, Justin merely discloses that the segments may have different shapes.

For at least the reasons discussed above, Justin does not anticipate claims 23-27 because Justin does not disclose all of the features of claim 23. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 24, 25, and 27

Claims 24, 25, and 27 depend from claim 23 and are allowable over the prior art for at least the reasons discussed above.

Claim 24 further recites “wherein for each of said segments said assembly surface is generally planar and arranged to be oriented generally in a plane extending in a proximal-distal direction and in an anterior-posterior direction when said femoral fixation surface is positioned on said distal end of said femur.” Justin does not disclose these features of claim 24.

Claim 25 further recites “wherein the assembly surfaces of the segments are positioned to minimize contact with one of an overlying patella and an overlying patellar component.” Justin does not disclose or suggest that any assembly surfaces of the device of Justin are positioned to minimize contact with one of an overlying patella and an overlying patellar component, as recited in claim 25.

Claim 27 further recites “wherein the femoral component has two condylar portions with a groove between the condylar portions, and the assembly surfaces are positioned in the groove.” Justin does not disclose or suggest that the device of Justin includes two condylar portions with a groove between the condylar portions, with assembly surfaces positioned in the groove, as recited in claim 27.

**New Claim**

New claim 42 has been added. Claim 42 depends from claim 21 and is allowable for at least the reasons discussed above and for its additional recitations.

**Conclusion**

Applicant submits that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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Date \_\_\_\_\_

By  \_\_\_\_\_

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